

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 3719 of 2007()

C.C.NO.375/04 OF J.F.C.M, ALATHUR

PETITIONERS:ACCUSED 3 TO 5

1. SWAMINATHAN, S/O.KRISHNAN,
AGED 59 YEARS, KUMBALAPADI HOUSE,
PANTHALAMPADAM, ALATHUR TALUK,
PALAKKAD DISTRICT.
2. THATHA, W/O.SWAMINATHAN,
AGED 53 YEARS,
KUMBALAPADI HOUSE,
PANTHALAMPADAM, ALATHUR TALUK,
PALAKKAD DISTRICT.
3. KRISHNAVENI, D/O.SWAMINATHAN,
AGED 26 YEARS,
KUMBALAPADI HOUSE,
PANTHALAMPADAM, ALATHUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. DHANAREKHA, D/O.CHERIKAL APPUKUTTAN,
PAZHAMPALAKKADU, ALATHUR TALUK,
PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3719 of 2007

Dated this the 12th day of December 2007

O R D E R

The petitioners are accused 3 to 5. They face a prosecution for the offence punishable inter alia under Section 120B and 494 read with 109 I.P.C. The crux of the allegations against the petitioners is that they are the brother, sister-in-law and niece of the first accused. The first accused had allegedly contracted a valid marriage with the complainant in the case. Thereafter the petitioners had allegedly behaved cruelly to the complainant and had tormented her. This obliged the complainant to leave her matrimonial home and take up residence at her parental home. Subsequently the first accused, with the involvement and active abetment of the petitioners herein also, had contracted a subsequent marriage with the tenth accused. This, in short, is the allegation. Though the complaint was filed as early as in 2003, it has now reached the stage of appearance only. The petitioners have received summons to appear before the learned Magistrate. At this stage, the petitioners have come to this court with the prayer that the proceedings against them may be

quashed to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C.

2. What is the ground? The only ground urged is that there is no specific assertion in the complaint filed that the petitioners were aware of the marriage of the first accused with the complainant. Inasmuch as there is no specific assertion to that effect, a crucial element of the offence under Section 494 I.P.C is lacking - namely the knowledge of the existence of the first marriage. Therefore, the petitioners are entitled to get the proceedings quashed. This, in short, is the contention raised.

3. It is very specifically averred that the petitioners are the brother, sister-in-law and the niece of the first accused and that they have been guilty of matrimonial cruelty against the complainant when she lived with the first accused. I am of the opinion that the complaint must also be read reasonably and not in any hyper technical or artificial manner. The totality of the averments convey eloquently that the complainant was married to the first accused and that the petitioners who were close relatives of the first accused had the requisite knowledge of the existence of the first marriage. Of course, it is true that it is specifically not reiterated that they had requisite knowledge of the existence of matrimony between the complainant and the

first accused. The complaint must also be read reasonably and averments about the existence of the earlier marriage and knowledge of the petitioners about such marriage are available in the complaint. The complaint read and understood reasonably eloquently declares that the petitioners did have the requisite knowledge of the existence of the marriage between the complainant and the first accused. At any rate, I am not persuaded to agree that the extraordinary inherent jurisdiction under Section 482 Cr.P.C which, it is by now trite, can and must be invoked only under exceptional circumstances, in aid of justice, cannot and need not be invoked in the facts and circumstances of this case.

4. This petition is accordingly dismissed. The learned counsel for the petitioners submits that the petitioners are willing to surrender before the learned Magistrate and seek regular bail. It is prayed that appropriate directions may be issued to consider their application for bail on merits and expeditiously.

5. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before

the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1)KLT 339].

6. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

7. Needless to say, the right of the petitioners to seek discharge under Section 245(1) or 245(2) Cr.P.C, as the case may be, will remain unfettered by the dismissal of this Criminal Miscellaneous Case.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007